
(2000) 08 P&H CK 0214
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 251 of 2000

Shanti Devi

APPELLANT

Vs

Haryana Vidyut Parsaran Nigam Limited and Others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Electricity (Supply) Act, 1948 — Section 28, 29

Citation : (2000) 4 RCR(Civil) 584

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Ramesh Sharma, for the Appellant; H.S. Gill, with Ms. Vandana Malhotra and Mr. R.K., for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Smt. Shanti Devi is owner in possession of land measuring 5 Kanals 16 Marias as recorded in the jamabandi for the year 1989-90 situated at Village Ramgarh Hadbast No. 232 Tehsil and District Panchkula mutated in her name through Mutation No. 1796 sanctioned on 29.2.91 without acquiring this land and without giving her any hearing and without framing any scheme as required under Sections 28 and 29 of the Electricity Supply Act, 1948 HYPNL started erecting high tension lines in her land. For erecting high tension line in her land, Defendant Haryana Vidyut Parsaran Nigam Limited (herein after referred to be as Nigam) did not frame any scheme as required under Sections 28 and 29 of the Electricity Supply Act, 1948. Earlier, the Defendants made one basement i.e. 30x30 approximately for the purpose of erecting high tension lines and now they are diverting this line of the same size for that purpose to the disadvantage of the Plaintiff. When she came to know about this illegal act and conduct on the part of the Defendants, she approached the Defendants and requested them not to erect the high tension line in her land. If this line is taken through this land, this land will be rendered useless. Plaintiff filed suit for permanent/mandatory injunction directing the Defendants not to erect any pole

over the basement and not to put any wire over the basement in the land till the decision of the suit on merits as otherwise the Plaintiff will suffer an irreparable loss inasmuch as this land will become useless and she will not be able to put this land to any use for fear of electrocution. Along-with the plaint, the Plaintiff made prayer for the grant of temporary injunction restraining the Defendants from erecting any pole over the basement prepared by them and not to put any wire in the land till the disposal of the suit. Defendant-Nigam opposed this prayer saying that the suit for permanent/mandatory injunction is not maintainable as statutory authority cannot be restrained from performing its statutory duty under the Electricity Supply Act, 1948. It was pleaded that Nigam is fully competent to construct tower line, transmission lines for supply of electricity. The Nigam is empowered u/s 42 of the Electricity Supply Act to place wires, poles, wall brackets, stays, apparatus, appliances for transmission and distribution of electricity, for achievement of the public purpose upon or through any land. It was further pleaded that the very existence of the already existing and constructed power line under a sanctioned scheme at the cost of about nine crores u/s 28 of the Act known as Panchkula-Shahbad double circuit 220 KV which will supply electricity to entire Haryana being inter State project the incoming supply from Himachal Pradesh via Panchkula of 220 KV Sub Station and to further connect the said line to Shahbad 220 KV Sub Station in order to supply and utilise both ways the power purchased and supplied between Haryana and Himachal Pradesh will to put to halt. It was further pleaded that in order to utilise the said power, the Nigam has to erect certain poles and to lay lines for the purpose in public interest. Line has almost been constructed by Panchkula Sub Division upto 155 towers but for a few towers line of No. 13 which is in the disputed property. The stubbing part or construction of tower had already been completed without any protest from the Plaintiff. Nigam does not require any land but has only a right of user. Plaintiff can apply to District Magistrate for determination of compensation payable, if any, as per law. She has no right to stall the erection of poles etc. in this land. Proper scheme as required under Sections 28 and 29 of the Electrically Supply Act, 1948 was framed earlier. The minor deviation of the route was being carried out by the Nigam in the public interest due to the objection of TBRL Ministry of Defence because otherwise, the line would have been in danger of being blown out thus causing, tremendous loss and injury to the Nigam and thereby misery to the general public. Even the deviation has been sanctioned by the competent authority. Plaintiff has no locus standi to file this suit.

2. Vide order dated 24.4.99, Civil Judge, Senior Division, Panchkula declined this prayer of the Plaintiff.

3. Not satisfied with this order of Civil Judge, Senior Division, Panchkula, Smt. Shanti Devi went in appeal which was dismissed by Additional District Judge, Ambala vide order dated 15.1.2000.

4. Still not satisfied, Shanti Devi has come up in revision to this Court.

5. I have heard both the sides and have gone through the record.

6. Learned Counsel for the Petitioner submitted that Defendants did not frame any scheme as required under Sections 28 and 29 of the Electricity (Supply) Act, 1948 nor did the Respondent-Nigam acquire any land and as such the erection of high tension line was illegal. It was submitted that due process of law as required under Sections 28,29 and 32 of the Electricity Supply Act, 1948 was not followed. It was submitted that compliance of Sections 28,29 and 32 ibid was necessary even if it is taken that it was altering the original scheme. It was submitted that the stand of the Nigam was contradictory. On the one hand, they say that it was a minor deviation in the original scheme, which they were carrying out and no compliance of Sections 28,29 and 32 of Act No. 54 of 1948 was required. On the other hand, they say that permission from the competent authority had been taken while altering the original scheme. It was submitted sanction of the competent authority was necessary to be taken as it was a supplementary scheme, if not a new scheme and such a supplementary scheme could be carried out only by complying with the provisions of Sections 28,29 and 32 ibid. It was submitted that there is no proof that when supplementary scheme was prepared, it was notified in the official gazette and in such local news papers as the Board or as the case may be, the generating company considered necessary. Section 28 of the Act No. 54 of 1948 reads as follows:

28. Preparation and sanctioning of scheme-(1) For the efficient performance of its duties under this Act, the Board or a Generating Company, as the case may be, may prepare one or more schemes, relating to the establishment or acquisition of generating stations, tie-lines, sub-stations or transmission lines, as are referred to in Clause (e) of Section 18 or Clause (c) of Sub-section (1) of Section 18A, as the case may be.

(2) The board or, as the case may be, the Generating Company which has prepared a scheme may, sanction such scheme either generally or in respect of any part of the area specified in the scheme and where a scheme has been sanctioned in respect of any part of the area, such scheme may subsequently be sanctioned in respect of any other part of that area:

Provided that where the scheme is of the nature referred to in Sub-section (1) of Section 29, the scheme shall not be sanctioned (generally or for part of an area) by the Board or the Generating Company except with the previous concurrence of the Authority.

(2A) The Board or, as the case may be, the Generating Company shall, as soon as may be after it has sanctioned any scheme which is not of the nature referred to in Section 29, forward the scheme to the Authority and, if required by the Authority so to do, supply to the Authority any information incidental or supplementary to the scheme within such period as may be specified by the Authority.

(3) Every scheme sanctioned under this section shall be published in the Official

Gazette and in such local newspapers as the Board or, as the case may be, the Generating Company may consider necessary.

Section 29 of this Act reads as follows:

29. Submission of schemes for concurrence of Authority, etc.-(I) Every scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification in the Official Gazette, shall, as soon as may be after it is prepared, be submitted to the Authority for its Concurrence.

(2) Before finalisation of any scheme of the nature referred to in Sub-section (1) and the submission thereof to the Authority for concurrence, the Board or, as the case may be, the Generating Company shall cause such scheme, which among other things shall contain the estimates of the capital expenditure involved, salient feature thereof and the benefits that may accrue therefrom, to be published in the Official Gazette of the State concerned and in such local newspapers as the Board or the Generating Company may consider necessary along with a notice of the date, not being less than two month after the date of such publication, before which licensees and other persons interested may make representations on such scheme.

(3) The Board or, as the case may be, the Generating Company may, after considering the representations, if any, that may have been received by it and after making such inquiries as it thinks fit, modify the scheme and the scheme so finally prepared (with or without modifications) shall be submitted by it to the Authority along with the representations.

(4) A copy of the scheme finally prepared by the Board or, as the case may be, the Generating Company under Sub-section (3) shall be forwarded to the State Government or State Governments concerned:

Provided that where the scheme has been prepared by a Generating Company in relation to which the Central Government is the (competent government or one of the competent ggovernments), a copy of the scheme finally prepared shall be forwarded also to the Central Government.

(5) The Authority may give such directions as to the form and contents of a scheme and the procedure to be followed in, and any other matter relating to, the preparation, submission and approval of such scheme, as it may think fit.

(6) In respect of any scheme submitted to the Authority for its concurrence under Sub-section (1), the Board or, as the case may be, the Generating Company shall, if required by the Authority so to do, supply any information incidental or supplementary to the scheme within such period, being not less than one month, as may be specified by the Authority.

Section 32 of this Act reads as follows:

32. Power to alter or extend schemes- The Board or, as the case may be, the

Generating Company may, from time to time, alter or extend a scheme by a supplementary scheme prepared in the manner specified in Section 31:

Provided that any alterations or extensions of a scheme which are, in the opinion of the Board or, as the case may be, the Generating Company, minor in character may be made without preparing a supplementary scheme.

Provided further that where any alteration or extension of the nature referred to in the first proviso is made in respect of a scheme concurred in by the Authority, details of such alteration or extension shall be intimated to the Authority as soon as may be after such alteration or extension is made.

7. It was submitted on the -strength of the provisions of Section 32 of this Act that the Board or, as the case may be, the Generating Company may, from time to time, alter or extend a scheme by a supplementary scheme prepared in the manner specified in section 31. If in the opinion of the Board or, as the case may be, the Generating Company any alterations or extensions of a scheme which are minor in character may be made without preparing a supplementary scheme. It was submitted that where any alteration or extension of the nature referred to in the first proviso of Section 32 of Electricity (Supply) Act, 1948 is made in respect of a scheme concurred in by the Authority, details of such alteration or extension shall be intimated to the Authority as soon as may be after such alteration or extension is made. "Authority" means the Central Electricity Authority constituted u/s 3 of the Act as defined in Section 2(1). Central Electricity Authority, which is constituted by Central Government under this Act is to exercise such functions and perform such duties under the Act and in such manner as the Central Government may prescribe or direct any advise any State Government, Board, Generating Company or other agency engaged in the generation or supply of electricity on such matters as will enable such government, Board, Generating Company or agency to operate and maintain the power system under its ownership or control in an improved manner and, where necessary, in co-ordination with any other Government, Board, Generating Company or other agency. owing or having the control of another power system.

8. It was submitted that earlier, as per the original scheme, one tower on location No. 13 was constructed in one corner of the land of the Petitioner. Tower with location No. 14 was in the land of TBRL (Terminal Balastic Research laboratory) and on objection of TBRL and original scheme was altered after a period of more than 10 years though u/s 29 of this Act, any objection upon a sanctioned scheme can be raised only within a period of 60 days. Objection raised by the TBRL could not have been entertained by the Respondents so as to alter the original scheme. In the scheme originally framed at point A was the existing tower at point B was the foundation pillars for proposed tower had been laid. In the original scheme, the route was A to B, B to C. In the altered scheme, which according to the Petitioner tantamounts to a new scheme in abandonment of the old scheme, the route is ADEC in plan Annexure P3. It was submitted that at point D foundation pillars for proposed tower have been constructed by the

Respondent. It was submitted that with the construction of foundation pillars for the proposed tower, Petitioner will be deprived of the use of her entire land measuring 5 Kanals 16 marlas. Construction of pillars for proposed tower at point D will be risk hazard for those, who will be tilling or using this land. It was submitted that in the year 1991, only area measuring 30 x 30 was utilised out of this land by the Respondents in constructing an electric tower and a platform in the corner of this land without informing the Petitioner. At that time, Petitioner did not object because she felt that the Board had used the corner of her land for a public purpose. She felt aggrieved when at the instance of TBRL, the Respondent altered their scheme and started constructing a new tower in the very heart of her land without any notice, consent and without any sanctioned scheme and without following the due process of law. In CWP No. 6711 of 1999, Smt. Shanti Devi challenged the Notification whereby her land was sought to be acquired allegedly in absolute defiance of the statutory provisions out of malice and in collusion with TBRL and Hon"ble D.B. of this Court vide order dated August 5, 1999 allowed the writ petition and quashed the Notification published on 12.5.99 on the ground that both the Notifications had been issued under Sections 4 and 6 of the Land Acquisition Act the same day. It was, however, left open to the Respondents to acquire the land afresh in accordance with law. It was submitted that no attempt was made by the Respondents to acquire the land and rather took refuge under the Indian Telegraph Act, 1885. Section 42 of Act No. 54 of 1948 lays down as follows:

Powers to Board for placing wires, poles etc-

(1) Notwithstanding anything contained in Sections 12 to 15 and 18 and 19 of the Indian Electricity Act, 1910 (9 of 1910) but without prejudice to the requirements of Section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the Board shall have, for the placing of any wires, poles, wall-brackets, stays apparatus and appliances for the transmission and distribution of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Board, all the powers which the telegraph authority possess under Part III of the Indian Telegraph Act, 1885 (13 of 1885) with regard to a telegraph established or maintained by the Government or to be so established or maintained

Provided that where a sanctioned scheme does not make such provision as aforesaid, all the provisions of Sections 12 to 19 of the first-mentioned Act shall apply to the works of the Board.

(2) A generating Company may, for the placing of wires, poles, wall brackets, stays apparatus and appliances for the transmission of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Generating Company, exercise all or any of the powers which the Board may exercise under Sub-section (1) and subject to the conditions referred to therein.

9. It is true that the preparation and sanctioning of scheme by the Board or the Generating Company is a must relating to the establishment or acquisition of Generating stations, tie-lines, sub-stations or transmission lines, as are referred to in Clause (e) of Section 18 or Clause (c) of Sub-section (1) of Section 18A, as the case may be. Where scheme is estimated to involve a capital expenditure exceeding such sum as may be fixed by the Central Government, from time to time, by notification in the Official Gazette, shall, as soon as may be after it is prepared, be submitted to the Authority for its concurrence.

10. In this revision, the first question that requires to be determined is whether there had been preparation of scheme and whether that scheme was published in the Official Gazette or some newspaper before it was sanctioned by the Board. Another question, which is allied to this question is whether the deviation of the transmission line from the route as laid down in the original scheme to the new route was deviation of a minor character not requiring the preparation of supplementary scheme or deviation was of far reaching character which required the preparation of a supplementary scheme to be published and then to be concurred by the Authority. Learned Counsel for the Petitioner submits that this deviation was not of minor character. It was of a far reaching character requiring the preparation of a supplementary scheme, which was required to be published and submitted to the authority for its concurrence. It was submitted that this deviation was of a far reaching character because route of the transmission line was changed altogether where earlier only a corner of Petitioner's land was to be utilised now with the change of the route of the transmission line, foundation pillars came to be constructed almost in the heart of her land thereby rendering her land useless altogether.

11. It was submitted that the deviation of the route from the original scheme was a supplementary scheme and supplementary scheme was required to be prepared in the manner specified in Section 31 of the Electricity (Supply) act, 1948 and therefore the supplementary scheme was also required to be concurred by the Central Electricity Authority. In this case, the question that requires to be considered is whether alteration in the scheme was of a minor character not requiring concurrence of the Central Electricity Authority as envisaged in Section 29 of the Electricity (Supply) Act, 1948. If the deviation is of minor character, no concurrence of the "Central Electricity Authority" is required. In this case the route earlier was A to B, B to C and after the alteration of the scheme, the route will be A to D and D to E and E to C. This route had to be deviated because of the objections or the TBRL. A committee comprising Director TBRL., Assistance Director, TBRL, SE DRDO (Headquarters), CE (Construction) HVPN etc. met on 2.12.1998 at TBRL Ranges, Ramgarh for considering the commencement of work of erection of towers. The committee inspected the site and the 220 KV Towers falling in the premises of TBRL Range Ramgarh. It was decided to shift Tower No. 14 to the suitable location to avoid any interference with the proposed security gate of TBRL presently clashing with the existing location of this tower. It was also decided that HPVN shall follow the laid down security rules and regulations

while working within the TBRL Ranges for execution and further maintenance of this work. It was also decided that for any damages in TBRL, Ranges occurred to the towers/transmission line of HVPNL during the firing trials, the TBRL authorities shall not be held responsible. It was found difficult for certain technical reasons to shift the towers outside the TBRL Range. The committee took the aforesaid decision. The whole time Directors, HVPNL, Panchkula in their in house meeting held on 30.11.1998 considered the proposal contained in memorandum submitted by the Chief Engineer /Construction, HVPNL, Panchkula vide his No. 381/CE/C dated 27.11.1998 and approved an extra expenditure of Rs. 4.1 lac to be incurred on account of shifting of Tower Nos. 13 and 14 of 220 KV/D/C Panchkula-Shahbad line.

12. In pursuance of Section 29 of Electricity (Supply) Act, 1948, Haryana State Electricity Board, notified the proposal to undertake the following scheme among others namely: 220 KV double circuit Panchkula-Shahbad line in its official gazette. Central Electricity Authority gave concurrence to the 220 KV transmission lines alongwith substation in 7th plan (Haryana) u/s 31 of the Electricity (Supply) Act, 1948 read with Electricity (Supply) Amendment Act. 1970.

13. Learned Counsel for the Respondents submitted that injunction could not have been granted to the Petitioner-Plaintiff because if injunction had been granted that would have meant the stalling of Panchkula-Shahbad Transmission Line. It was submitted that placing of transmission line was in the larger public interest. Balance of convenience was in favour of Respondents.

14 In Maharashtra State Electricity Board Vs. Janardhan Bhausahab Desai and Another, it was held that the scheme can be framed for generating stations, tie lines, service stations, transmission lines or establishments. Section 28 cannot be said to contemplate that while sanctioning scheme, its implementation would also be charted therein. The execution and implementation of the scheme arises after it has been framed and sanctioned in accordance with law. Section 28 speaks of preparation and sanction of schemes for various purposes detailed thereunder. The finalisation of the route map at the time of the framing of the scheme or its sanction is not a condition precedent for a valid and legal scheme u/s 28 and even if route map has not been prepared at the time of preparation of the scheme or not finalised at the time of grant of sanction of scheme, such scheme is not invalidated. Section 30 gives fair idea of relevant aspects for consideration by Central Electricity Authority and the said aspects may also supply relevant consideration for preparation and sanction of scheme by Board as well. Finalisation of route map for transmission line is certainly not one of such matters.

15. The Electricity Board has all the powers which the Telegraph Authority possesses under Part-III of the Indian Telegraph Act, 1885 with regard to a telegraph established or maintained by the Government or to be so established or maintained by the placing of any wires, poles, wall-brackets, stays apparatus

and appliances for the transmission and distribution of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Board, where the provision in this behalf is made in a sanctioned scheme, in view of the provisions of Section 42 of the Electricity (Supply) Act, 1948.

16. The Board can exercise all powers under Chapter III of Telegraph Act, 1885 and there is no necessity to follow the provisions of Sections 12 to 16, 18 and 19 of the Electricity (Supply) Act, 1948.

17. In Maharashtra State Electricity Board Vs. Janardhan Bhausaheb Desai and Another, , it was a suit filed by Plaintiff-Respondents for permanent injunction restraining the Defendant Electricity Board from taking extra high voltage transmission line (EHVT) through the suit land without following the due process of law and further directing the Board to remove the tower No. 45 from the suit land. It was decreed by the two Courts below but was dismissed in second appeal by the High Court. The Board framed scheme known as Gokul Shirgaon scheme which was notified in the official gazette of Maharashtra Government. The case of Board was that for the execution of the said scheme the powers of the Telegraph Authority u/s 10 of the Indian Telegraph Act, 1885 was vested in it as provided u/s 42 of the Act of 1948 and thereby the Board was empowered to enter upon any land, to erect poles and lay wires, cables, etc., for transmission of electricity. Pursuant to the said scheme, the Board chartered route of the said transmission line and accordingly the EHVT line was to pass through the disputed land Gat No. 165. During the course of construction of transmission line under the aforesaid scheme, the officials, agents and servants of the Board entered upon the suit land bearing Gat No. 165 to which the Respondents (Plaintiffs) objected. As a result of the objection raised by the Plaintiffs, the Board made an application before the District Magistrate of the concerned area u/s 16 of the Indian Telegraph Act and on 20th October, 1992, the District Magistrate permitted the Board to proceed further in exercise of the powers under the Telegraph Act and the Act of 1948. The concerned Gokul Shirgaon Scheme framed u/s 29 of the Electricity (Supply) Act, 1948 was published in the official gazette.

18. A close look at Section 28 of the Electricity (supply) Act, 1948, would show that the Board can prepare and frame schemes relating to the establishment or acquisition of generating stations, tie-lines, sub-stations or transmission lines, as are referred to in Clause (e) of Section 18 or Clause (c) of Sub -Section (1) of Section 18A. The scheme so framed by the Board or the Generating Company may be sanctioned either generally or in respect of any part of the area specified in the scheme and if a scheme has been sanctioned in part of the area, subsequently the scheme be sanctioned in respect of any other part of that area. If the scheme exceeds the involvement of expenditure of more than a particular amount then prior to the sanction of the scheme the previous concurrence of the authority is required. The schemes can be framed for generating stations, tie

lines, service stations, transmission lines or establishments. Section 28 cannot be said to contemplate that while sanctioning scheme its implementation should also be charted therein. The execution and implementation of the scheme arises after it has been framed and sanctioned in accordance with law. Section 28 speaks of preparation and sanction of schemes for various purposes detailed thereunder. The finalisation of the route map at the time of the framing of the scheme or its sanction is not a condition precedent for a valid and legal scheme u/s 28 and even if route map has not been prepared at the time of preparation of the scheme or not finalised at the time of grant of scheme, such scheme is not invalidated.

19. While issuing notification in pursuance of Section 29 of the Electricity (Supply) Act, 1948, the Haryana State Electricity Board made it clear that for the placing of wires, support structures, stays, apparatus and appliances for the transmission and distribution of electricity for the transmission of telegraphic or telephonic communications necessary for the purposes of the schemes, the Board shall in accordance with the provisions of Section 42 of the Electricity (Supply) Act, 1948 have and shall exercise the powers which the telegraph authority possesses under part III of the Indian Telegraph Act, 1885 with regard to a telegraph established or maintained and shall not be bound by the provisions of the Sections 12 to 16 and 18 to 19 of the Indian Electricity Act, 1910.

20. It was submitted by the Learned Counsel for the Respondents that the Board had every authority to pass the transmission line through the Plaintiffs land. It was submitted that the scheme was first approved by the Planning commission (Power and Energy Division) and then by the Central Electricity Authority. It was submitted that in the larger interest of the defence, route had to be changed. It was submitted that if injunction is granted, larger public interest will be hit inasmuch as this scheme will be stalled. It is a joint venture being undertaken by the Himachal Pradesh State Electricity Board and the Haryana State Electricity Board.

21. In *Bhagwan Dass and Ors. v. Surinder Kumar and Anr.* (1988)94 PLR 179, it was held that where by erection of electric poles in the land in possession of the Plaintiffs, they are not likely to suffer any damage as the land would still be cultivable inspite of the electric poles, placing of electric poles in the land is in the interest of general public, injunction should not be granted to the Plaintiffs.

22. It was held in *The Superintending Engineer, TNEB Basin Bridge, Power House, Chennai-12 and three others Vs. Thangaprakasam*, that the provisions of Electricity Supply Act read with Sections 10 and 16 of the Telegraph Act recognises the absolute power of the Electricity Board to proceed with the work of constructing concrete bases for installing high posts to draw high tension wires for supply of electricity over the field of an individual, subject to his right to claim damages, if proved. So long as the work is done by the Board in accordance with the Sanctioned Scheme and in accordance with the provisions contained in the

Act it may not be within the framework of law to restrain them from doing so. By granting an order of injunction, the Board cannot be prevented from doing an act which is recognised by a statute. The action of the Board in the case on one hand is in the larger interest of the public to have an undisturbed power supply. Therefore, an order granting injunction in favour of Plaintiff apart from being against statutory powers of Board affect interest of public at large.

23. It was held in *Dr. Mohan Lai v. the Haryana State Electricity Board and others*, (1989) PLR 380 that Section 42 of the Electricity (Supply) Act, 1948 empowers the Board to place any wires, poles, wall brackets, stays apparatus and appliances for the transmission and distribution of electricity, Sub-section (1) further lays down that Board shall have all the powers which the telegraph authority possesses under Part-III of the Indian Telegraph Act, 1885, with regard to a telegraph established or maintained by the Government or to be so established or maintained. Part III of the Indian Telegraph Act, 1885 contains Sections 10 to 19B in Part III. Section 10 empowers the telegraph authority to place and maintain a telegraphic line under, over, along or across and immovable property.

24. It was further held that "the remaining dispute is that the over-head line will pass over Southern part of the plot of the Plaintiff-Petitioner. In such a situation the point in question is whether the Court will be justified in granting an injunction to hold up the execution of the entire Project involving several crores of rupees or leave the Plaintiff to claim compensation in accordance with the provisions of law. This will be a material consideration while considering the comparative balance of convenience in the facts and circumstances of the case."

25. In this case also the scheme was sought to be executed at cost of Rs. 8311 lacs plus Rs. 4.1 lacs which has now swelled to several crores. If the execution of the scheme is stalled, the Board will suffer greater injury vis-a-vis the injury which the Plaintiff will suffer. Plaintiff may at best claim compensation for the value of the land if it becomes useless because of the execution of this scheme.

26. Learned counsel for the Petitioner while relying on *The Orissa State Electricity Board and Another Vs. Pyari Mohan Patnaik and Others*, submitted that so long as provision for placing, maintaining or taking any wires, poles and appliances for the transmission and distribution of electricity, as mentioned in para 1 to Section 42 of the Electricity (Supply) Act, is not made in the sanctioned scheme, the powers under Part III of the Electricity Act, 1910 will not be available and the provisions of Ss. 12 to 19 of the Electricity Act shall apply to the works of the Board. Where the complained of electric transmission line over the suit land belonging to the Plaintiffs was not in accordance with any sanctioned plan and that the complained of alteration was done by a Superintending Engineer and the Board had not accorded any sanction for the said alteration. The protection u/s 42 of the Electricity (Supply) Act, was not available to the Electricity Board. The execution of the work could not be legalised retrospectively by granting ex-post facto sanction. Therefore, the

provisions of Ss. 12 to 19 of the Electricity Act would apply to the complained-of transmission line. So, the Board was not at all authorised to take the said transmission line on and over the Plaintiffs suit land, especially in view of their admitted objection and stiff opposition to that effect, without following the relevant provisions of Ss.12 to 19 of the Electricity Act, 1948.

27. In this case, it would bear repetition that the scheme was duly sanctioned by the Haryana State Electricity Board and approved by the Central Electricity Authority and the scheme was duly published in its official gazette by the Haryana State Electricity Board before it was sanctioned.

28. In this case Plaintiff will not suffer any irreparable injury if injunction is not granted to her. At best she will lose 5 kanals 16 marlas of land, for the loss of which she can claim to be compensated. On the other hand, if injunction is granted to her, the Board will suffer irreparable injury inasmuch as this inter-state project will come to a halt, the object of which is to provide electricity to the villages falling on Panchkula-Shahbad Transmission Line.

29. For the reasons given above, the non-grant of injunction to the Plaintiff was a wise exercise of discretion on the part of Courts below. Even otherwise, sitting in revision, High Court will be loath in interfering with the exercise of discretion in the matter of grant or refusal of temporary injunction where this grant or refusal has proceeded on a balanced exercise of discretion. In revision exercise of discretion will be interfered with when while exercising discretion, the Court had ignored well recognised judicial principles governing the domain of the grant of injunctive relief. This revision fails and is dismissed. Trial Court will try to decide the suit as early as possible at any rate within one year.